

In The Matter of Merchant Mariner's Document No. Z-531800-D2
Issued to: PHILLIP NORMAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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PHILLIP NORMAN

This case comes before me by virtue of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 26 April, 1949 Appellant was charged before an Examiner of the United States Coast Guard at New Orleans, Louisiana, with "misconduct" for that while serving as "galley utility" on board a merchant vessel of the United States, the SS PHILIP BARBOUR under authority of his duly issued Merchant Mariner's Document Z-531800-D2, he failed to join said vessel without reasonable cause on or about 7 April, 1949.

Voluntarily waiving his right to counsel, Appellant pleaded not guilty to the charge, although he admitted that he had not sailed with the vessel at the time of its departure from New Orleans. There was received in evidence an excerpt from the Shipping Articles from the SS PHILIP BARBOUR showing Appellant's name, rating and wages. Appellant explained that his reason for failing to report to his vessel was due to the fact that on the evening of the 5th of April, he had gone ashore with permission, and had a number of drinks at a nightclub; that he was returning to the ship when the New Orleans police arrested and charged him with disorderly conduct. Before the Municipal Court at New Orleans, he was sentenced to serve 20 days and to pay a fine of \$20.00 on each

of two charges and his incarceration prevented him from returning to the vessel.

At the conclusion of the hearing, an order was entered by the Examiner making effective a prior order at New York dated 29 December 1948, suspending Appellant's Merchant Mariner's Document for six months but putting him on probation for 12 months from that date. Since his latest offense occurred within the probationary period, the earlier suspension was made effective.

This appeal follows and it is urged:

1. His failure to join, was not due to any fault of his own because he was improperly arrested by the New Orleans police;
2. He attempted to advise the Ship's Master of his predicament in order that some other person could be employed to take his place; and
3. He has been going to sea for 5 years prior to the offense charges against him in New York without any record of an offense cognizable under R.S. 4450, as amended.

FINDINGS OF FACT

On 1 April, 1949, Appellant acting under authority of his duly issued Merchant Mariner's Document Z-531800-D2 signed Shipping Articles on the SS PHILIP BARBOUR for a foreign voyage, to serve in the capacity of galley or mess utility.

During the evening of 5 April, 1949, Appellant was granted shore leave and went to a nightclub in New Orleans where he became intoxicated. While attempting to return to his vessel, he was arrested by the New Orleans police. On 6 April, 1949 he was sentenced in the Municipal Court at New Orleans to serve 20 days and to pay \$20.00 on each of two charges of disorderly conduct lodged against him. Appellant endeavored to notify the Master and the Shipping Agent of his inability to reach the PHILIP BARBOUR in order that a replacement could be obtained to fill the job for which he had contracted. The vessel left New Orleans on 7 April, 1949 and Appellant was not on board.

OPINION

There is little doubt in my mind that Appellant did not deliberately intend to breach his contract with the Master of the SS PHILIP BARBOUR. I believe that when he left the ship on the evening of 5 April, he expected to sail with his vessel but committed the indiscretion of becoming "tight" (as he expressed it) in a nightclub which disposed the police officers to take him into custody. His inability to fulfill his agreement flows from that indiscretion and since his failure to join the vessel was a violation of the earlier probationary order, the Examiner was justified in making that order effective.

I am, however, favorably impressed by Appellant's efforts to have the Ship's Master notified of his compulsory absence in time for the Master to obtain a replacement.

CONCLUSION and ORDER

Accordingly, I direct that the order of the Examiner dated New Orleans on 26 April, 1949 be modified to provide that Appellant's Merchant Mariner's Document Z-531800-D2 be suspended for a period of six months, of which the first two months shall be effective as of the date said document is surrendered; the remaining four months shall not become effective provided no charges are proved against Appellant under the provisions of R.S. 4450 (46 United States Code 239), as amended, for acts committed within 1 year from the date said document is surrendered. As so modified, said order is AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 16th day of June, 1949.

***** END OF DECISION NO. 340 *****

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